

STROOCK

September 25, 2015

Via Electronic Filing

The Honorable Paul A. Engelmayer
United States District Court
Southern District of New York
40 Centre Street, Room 2104
New York, New York 10007
EngelmayerNYSDChambers@nysd.uscourts.gov

Re: *Permission Data, LLC v. Newsmax Media, Inc.*
Case No.: 1:14-cv-07129-PAE

Dear Judge Engelmayer:

We are legal counsel for the defendant/counter-plaintiff, Newsmax Media, Inc. (“Newsmax”), and are joined in this letter by Justin Mercer, Esq., counsel for third-party, Forensiq LLC (“Forensiq”). This correspondence is submitted in furtherance of the parties’ prior joint letter of September 4, 2015 [D.E. 45] with the dual objective of affording Forensiq the additional time needed to respond to Newsmax’s August 24, 2015 Subpoena *Duces Tecum* (“Subpoena”), without prejudicing Newsmax’s rights under the upcoming September 28, 2015 discovery deadline.

As noted in the parties’ earlier correspondence, Newsmax first became aware of the potential significance of documents in Forensiq’s possession during the August 18, 2015 deposition of Optimal Fusion, LLC’s (“Optimal Fusion”) Fed. R. Civ. P. 30(b)(6) corporate representative. During this deposition, Optimal Fusion’s Chief Executive Officer testified that “we have a lot of fraud prevention systems in our company,” and that “[u]nfortunately, we had a bad seed that go through.” Optimal Fusion specifically identified Forensiq (formerly known as CPA Detective) and its fraud management platform, as among the fraud prevention tools that it utilized to ensure that the email addresses garnered in connection with Newsmax’s campaigns were authentic, non-computer generated addresses.

Upon the conclusion of this deposition, Newsmax immediately issued the Subpoena, effectuating service on August 24, 2015. Forensiq initially estimated that it would need until September 22, 2015 in which to search for and produce responsive documents. Despite diligent efforts, this deadline has proven optimistic and Forensiq has requested an enlargement of time through October 2, 2015 (which extends beyond the current September 28, 2015 fact discovery deadline).¹ Newsmax has no objection to providing the requested enlargement, but wishes to

¹ In order to respond fully to Newsmax’s Subpoena, Forensiq requires additional technical information from Optimal Fusion. According to Forensiq, only Optimal Fusion is in possession of that information. The undersigned counsel for Forensiq has recently been in contact with Optimal Fusion’s counsel concerning the exchange of that information. Once received, Forensiq expects to promptly produce responsive documents.

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preserve its right to seek judicial intervention in the unlikely event it proves necessary.

Consequently, the parties' jointly request that: (1) Forensiq be afforded additional time in which to produce documents responsive to Newsmax's Subpoena correspondence, and (2) that Newsmax be granted one week from its receipt of Forensiq's document to file a pre-motion letter to compel in the unlikely event that it deems judicial intervention necessary.²

For all of the foregoing reasons, Newsmax and Forensiq jointly request that this Court grant the proposed extension. We thank the Court for its attention to this letter, welcome the opportunity to further explain the need for the requested enlargement, and await direction as to whether the Court desires a proposed agreed order for its consideration.

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² Forensiq presently believes that, provided that it timely receives the needed technical information from Optimal Fusion, it should be in position to fully respond to Newsmax's Subpoena by October 2, 2015 – though additional time *may* prove necessary.